IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6285 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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MOHANBHAI PURABHAI PATEL

Versus

DY.SECRETARY

Appearance:

1. Special Civil Application No. 6285 of 1998

MS KUSUM M SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 19/07/2002

ORAL JUDGEMENT

The petitioner has challenged the validity of an order dated 30.6.1998 passed by the State of Gujarat.

2. The facts giving rise to the present petition, in

a nutshell, are as under :

3. The Chief Supply Inspector had inspected Godown No. 6 of Pashu Peta Bazaar, Samarvada and had found that 269 bags weighing 225 quintals of raydo and 291 bags weighing 291 quintals of mug valuing Rs. 4,36,500/- stored there. The total value of the foodgrain stored was Rs. 7,10,880/-. Upon inquiry it was found that no record with regard to the said bags was kept either in stock register or vasiyati register. The petitioner was the person who was in charge of the godown and upon inquiry he submitted that the said bags contained foodgrain belonging to some farmers but he could not name the farmers and had submitted that the farmers, who could not sell the said foodgrain or did not sell it as they did not find the price reasonable, were permitted to store the foodgrain in the said godown.

4. In the circumstances, by an intimation dated 30.11.1996, the petitioner was restrained from disposing of the said goods.

5. Subsequently, a show-cause notice dated 16.12.96 was given to the petitioner calling upon him to show cause as to why the bags of foodgrain should not be confiscated. In reply to the show-cause notice, the petitioner had given details of persons, who were farmers and who were the owners of the said foodgrain. The farmers, who were said to be owners of the said bags, had also remained present before the concerned authority and had stated that the said bags belonged to them. Ultimately, after hearing the concerned parties, the Collector had directed, by an order dated 4.1.97, that 15% of the goods which were found at the godown should be confiscated whereas 85% of the goods should be released.

6. Being aggrieved by the order dated 4.1.97 passed by the Collector, the petitioner had filed an appeal before the State of Gujarat. The said order of the Collector had been confirmed by the State of Gujarat by an order dated 30.6.98. Being aggrieved by the said order dated 30.6.1998, the petitioner has approached this court.

7. Learned advocate Ms. K.M. Shah appearing for the petitioner has submitted that as a matter of fact the petitioner had no intention to earn money by way of black market trading but he had only made a mistake by not making necessary note with regard to the foodgrain bags which were kept in his godown which in fact belonged to the farmers and only as a stop-gap arrangement they were

kept in the godown. It has been submitted by her that if the petitioner had made a record in the stock register and in the vasiyati register or had even informed the concerned supply inspector or the concerned authority, possibly this action would not have been taken but only on account of inadvertence, necessary record with regard to the bags was not maintained by the petitioner.

8. It has been submitted that the petitioner had given names of the farmers, whose bags had been stored in the godown while giving reply to the show-cause notice and the concerned farmers had also remained present before the Collector at the time of the hearing. In the circumstances, according to the learned advocate, no serious illegality had been committed by the petitioner and therefore the Collector should not have taken such a harsh action against the petitioner by confiscating 15% of the goods stored in his godown.

9. It has been lastly submitted that if this court is not inclined to interfere with the concurrent findings arrived at by the authorities below, the court should take a lenient view and reduce the fine/penalty in view of the fact that there was no price control with regard to raydo and mug at the relevant time. It has been submitted that there could not have been any mala fide intention of black marketeering of the said foodgrain on the part of the petitioner. She has further submitted that this was the first incident which had taken place in the business career of the petitioner and therefore a lenient view should be taken by the court. In support of the above-referred submissions, she has cited a judgment delivered in the case of Laxmi Oil Mills & Industries v. State of Gujarat and anr., 1987(2) GLH (U.J) 33.

10. On the other hand, learned AGP Shri Mahendra Patel has summated that this court should not disturb the concurrent findings arrived at by both the authorities and he has also submitted that had the petitioner no mala fide intention, he would have made necessary entries in his registers with regard the bags which had been kept in the godown. As no entries were made and as no intimation with regard to storage of the bags was given to any authority, one can safely presume that the petitioner had a dishonest intention and, therefore, there is no need to interfere with the findings arrived at by the authorities below.

11. I have heard the learned advocates and looking to the facts of the case, and more particularly in view of the admitted fact that there was no price control in

respect of raydo and mug at the relevant time, there could not have been any intention of the petitioner of black marketeering. Storage of this foodgrain would not have helped the petitioner in any way in earning more profits in an illegal manner. It is true that technically a default has been committed by the petitioner by not making necessary entries with regard to storage of the bags of foodgrain in his record or by not giving intimation of the said fact to the concerned authority.

12. As the petitioner had adduced sufficient evidence about the persons who were the owners of the said bags and as no price control order had been passed with regard to the foodgrain, in my opinion, ends of justice would be served if a lenient view is taken in the matter. Looking to the law laid down by this court in the case of Laxmi Oils Mills (supra), and as this is the first incident with regard to a technical breach, and more particularly when no dishonest intention has been established on the part of the petitioner, in my opinion, it will be just and proper to reduce the punishment inflicted by the order of confiscation to the tune of 10%. Thus, the order dated 30.6.98 is modified so far as imposition of penalty or confiscation of the foodgrain is concerned and it is directed that instead of 85%, 90% of the stock should be released and the valuation of the goods, which was arrived at the relevant time, should also be taken into account. Thus, 10% of Rs. 7,10,880/- should be recovered from the petitioner instead of Rs. 106,662/as directed by the State of Gujarat. Thus, the impugned order dated 30.6.1998 is modified to the above extent.

The petition stands disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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